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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,571	02/05/2004	George Bourne	10177-176-999	5495
20583	7590	08/25/2006	EXAMINER	
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	
DATE MAILED: 08/25/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/772,571

Applicant(s)

BOURNE ET AL.

Examiner

Luan K. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 10-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-9 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/29/ &amp; 8/29/05</u> . | 6) <input type="checkbox"/> Other: _____  |

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Applicant's election with traverse of Group A, Species Group I and Subspecies Group 1 in the response filed on 6/30/2006 is acknowledged. The traversal is on the ground(s) that "Applicants believe that the classifications of the inventions in Subspecies Groups 1 and 2 are the same, and the field of search will be the same, Applicants believe that dividing among these figures is improper". This is not found persuasive because the species are not useable together they are by definition independent inventions. Once the claims are determined to be directed to mutually patentable inventions and the office requires an election of species, the appropriate traverse is an admission on the record that applicant does not find the claimed species are patentable, one over the other. Having not done so the reasons presented are not relevant when examination of more than one species would be a burden. Applicant is not entitled to examination of multiple independent inventions in one application.

Applicants indicate that claims 1-13 are readable on the elected Species and Subspecies. However, claim 10 recites "a removable member attached to the partition, wherein removal of the removable member results in a tearing of the partition" is deemed not to read on the elected Subspecies and claims 11-13 are directed to the method which are not elected. Claims 10-28 have been withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention.

The requirement is still deemed proper and is therefore made **FINAL**.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 5-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Askew (6,966,450). Askew discloses a system (10) comprising a container (12) with a first compartment and a second compartment and a partition (16) disposed between the first and second compartments. The partition can be removed which is considered equivalent to at least part of the partition is removable to allow communication between the first compartment and the second compartment. The first compartment and the second compartment of Askew are inherently capable for containing a medical device and an anti-microbial agent such as a fluid or a gel or iodine or others as claimed respectively.

As to claims 5 and 6, Askew discloses a cover (14) for covering the container and the cover connected to the container. The partition is also connected to the container. Therefore, the partition is also connected to the cover.

3. Claims 1-3 and 5-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Ladyjensky (5,552,968). Ladyjensky discloses a system comprising a container (103) with a first compartment and a second compartment and a partition (100, 105, 102) disposed between the

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first and second compartments. Ladyjensky further discloses at least part of the partition (100) is removable to allow communication between the first compartment and the second compartment.

The first compartment and the second compartment of Ladyjensky are inherently capable for containing a medical device and an anti-microbial agent such as a fluid or a gel or iodine or others as claimed respectively.

As to claims 2-3, Ladyjensky discloses the partition comprises an opening and a removable sealing element (100) covering the opening.

As to claims 5 and 6, Ladyjensky discloses a cover (101, 120) for covering the container and the cover connected to both the cover and the container.

4. Claims 1, 2 and 5-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Miczka et al. (5,143,211; hereinafter Miczka'211). Miczka'211 discloses a system comprising a container (1) with a first compartment and a second compartment (2, 3) and a partition (4, 9, 24) disposed between the first and second compartments. Miczka'211 further discloses at least part of the partition (9, 24) is removable to allow communication between the first compartment and the second compartment. The first compartment and the second compartment of Miczka'211 are inherently capable for containing a medical device and an anti-microbial agent such as a fluid or a gel or iodine or others as claimed respectively.

As to claim 2, Miczka'211 discloses the partition comprises an opening and a sealing element (23, 24) covering the opening.

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As to claims 5 and 6, Miczka'211 discloses a cover (22) for covering the container and the cover connected to the container. The partition is also connected to the container. Therefore, the partition is also connected to the cover.

*Allowable Subject Matter*

5. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb  
August 23, 2006



Luan K. Bui  
Primary Examiner  
Art Unit 3728